not reported

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1386.

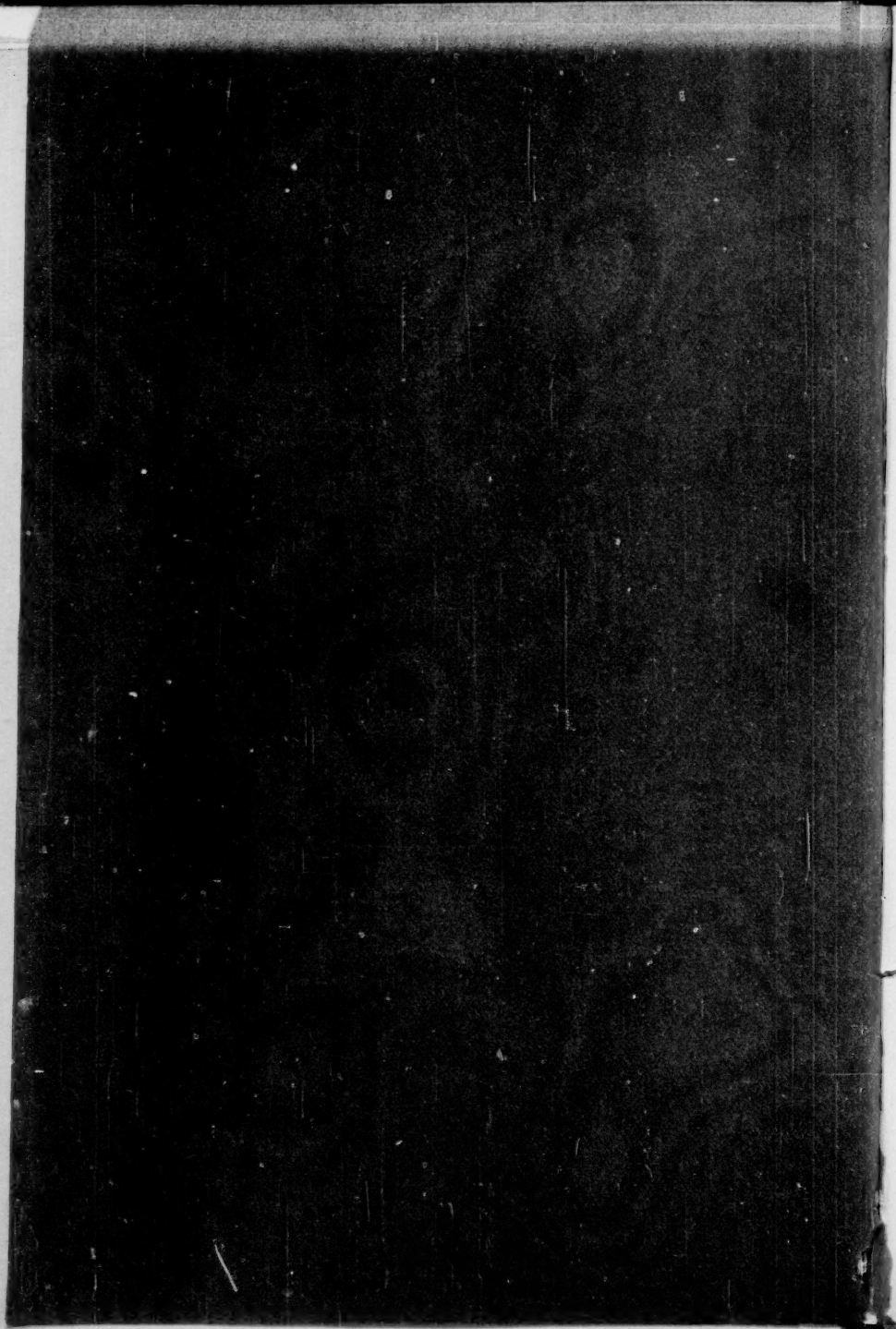
THE UNITED STATES, APPELLANT,

vs.

WILLIAM L. BAILEE, AS ADMINISTRATOR OF THE ESTATE OF THOMAS J. LAMDIN, DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 9, 1888.



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1 I.—*Original petition.*—*Filed Dec.* 16, 1886.

Court of Claims.

WILLIAM L. BAILEE, ADMINISTRATOR OF THE estate of Thomas J. Lamdin, deceased,
vs.
THE UNITED STATES. } No. 15401.

Your petitioner would respectfully show that on *that on* the 4th day of August, 1886, he was duly appointed and qualified by the orphans' court of Baltimore City, in the State of Maryland, administrator of the estate of Thomas J. Lamdin, deceased, late a citizen of the United States and a resident of the city of Baltimore, State of Maryland.

2d. Your petitioner would further show that prior to June 6th, 1872, said Thomas J. Lamdin gave the information upon which a penalty of $1,100.00 was recovered by compromise from Gotschalk & Spilman, retifiers and wholesale liquor dealers in said city of Baltimore, which compromise was approved by the Secretary of the Treasury January 10th, 1873.

3d. Your petitioner would further show that said Thomas J. Lamdin was, on the 10th day of December, 1886, declared by the Secretary
2 of the Treasury to have been the first informer, and that said Lamdin as informer would have been entitled to be paid the sum of $490.00, but refuses to pay said sum because before the approval of the compromise by the Secretary of the Treasury the law giving shares to informers was, as he claims, repealed.

4th. Your petitioner would further show that no assignment or transfer of said claim or any part thereof has ever been, and that he as administrator as aforesaid is entitled to judgment for $490.00 after the allowance of all just credits and offsets.

WILLIAM L. BAILEE,
Administrator of the estate of Thomas J. Lamdin, deceased.

I. G. KIMBALL,
Att'y for Claimant.

STATE OF MARYLAND, *City of Baltimore, ss:*

L. Bailee, being duly sworn, deposes and says that he has read the foregone petition signed by him and knows the contents thereof, and that the statement therein made on his own information are true and the statements made on information and belief he believes to be true.

WILLIAM L. BAILEE.

3 Sworn to and subscribed before me this 13th day of December, A. D. 1886.

JNO. T. MADDOX, Jr.

STATE OF MARYLAND, *Baltimore City, set:*

I hereby certify that John T. Maddox, esquire, before whom the annexed affidavit was made, and who has thereto subscribed his name, was, at the time of so doing, a justice of the peace of the State of Maryland, in

and for the city of Baltimore, duly commissioned and sworn, and authorized by law to administer oaths and take acknowledgments. I further certify that I am acquainted with the handwriting of the said justice and verily believe the signature to be his genuine signature.

In testimony whereof, I hereto set my hand and affix the seal of the superior court of Baltimore city, this 15' day of Dec'r, A. D. 1886.

[SEAL.] JAS. BOND,
Clerk of the Superior Court of Baltimore City.

4 II.—*General traverse.—Filed Dec'r*, 16, 1886.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragment to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

ROBERT A. HOWARD,
Assistant Attorney-General.

5 III—*Findings of fact and conclusion of law.—Filed Feb'y* 6, 1888.

This case having been heard before the Court of Claims, the court upon the evidence finds the facts to be as follows:

I.

On the 14th of August, 1866, the Secretary of the Treasury issued the following circular:

TREASURY DEPARTMENT, *August 14th*, 1866.

The act amendatory of the internal-revenue law, which went into effect on August 1, contains the following provisions:

"And where not otherwise provided for, such share as the Secretary of the Treasury shall by general regulation provide, not exceeding one moiety nor more than five thousand dollars in any one case, shall be to the use of the person, to be ascertained by the court which shall have imposed or decreed any such fine, penalty, or forfeiture, who shall first inform of the cause, matter, or thing whereby such a fine, penalty, or forfeiture shall have been incurred; and when any sum is paid without suit, or before judgment, in lieu of fine, penalty, or forfeiture, and a share of same is claimed by any person as informer, the Secretary of the Treasury, under general regulations to be by him prescribed, shall determine whether any claimant is entitled to such share as above limited, and to whom the same shall be paid, and shall make payment accordingly.

6 "It is hereby declared to be the true intent and meaning of the present and all previous provisions of internal-revenue acts granting shares to informers, that no right accrue to or is vested in any informer in

any case until the fine, penalty, or forfeiture in such case is fixed by judgment or compromise and the amount or proceeds shall have been paid, when the informer shall become entitled to his legal share of the sum adjudged or agreed upon and received: Provided, That nothing hereing contained shall be construed to limit or affect the power of remitting the whole or a portion of a fine, penalty, or forfeiture conferred on the Secretary of the Treasury by existing laws."

Under the authority here conferred the following schedule of informers' shares is hereby prescribed:

On the first five hundred dollars of any penalty the informer shall receive	50 per cent.
Of the next fifteen hundred dollars	40 per cent.
Of the next two thousand dollars	30 per cent.
Do. do.	25 per cent.
Do. do.	20 per cent.
Do. do.	10 per cent.
Of all above twelve thousand dollars and not exceeding fifty-five thousand dollars	5 per cent.
7 Thus, if the penalty is five hundred dollars, the informer will receive	$250.00
If one thousand dollars	450.00
If two thousand dollars	850.00
If three thousand dollars	1,150.00
If four thousand dollars	1,450.00
If five thousand dollars	1,700.00
If six thousand dollars	1,950.00
If seven thousand dollars	2,150.00
If eight thousand dollars	2,350.00
If nine thousand dollars	2,500.00
If ten thousand dollars	2,650.00
If eleven thousand dollars	2,750.00
If twelve thousand dollars	2,850.00
Of every additional one thousand dollars up to fifty-five thousand	50.00

HUGH MCCULLOCH,
Secretary of the Treasury.

II.

Upon the information first given by Thomas J. Lamdin to the proper officers of the United States, after said circular was issued, and in December, 1871, against Gotschalk & Spilman, rectifiers and wholesale liquor dealers, said firm were proceeded against for violation of the internal-revenue laws, but the case was not finally settled until 1873, when it was compromised by the payment, by said Gotschalk & Spilman, to the United States, of eleven hundred dollars ($1,100), as or in lieu of penalties.

III.

8 On the tenth day of April, 1872, said Lamdin made his claim for informer's share under the provisions of the circular dated Au-

gust 14th, 1866. And the Secretary of the Treasury made the following decision upon said application:

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., December 10th, 1886.

I. G. KIMBALL, Esqr.,
Attorney at Law, Washington, D. C.:

SIR: In your letter of the 1st ultimo, enclosing a power of attorney from W. L. Bailie, administrator on the estate of Thomas J. Lamdin, deceased, authorizing you to prosecute the claim of the deceased to an informer's share, you requested that "this case be taken up and said Lamdin declared or found to have been the informer."

In reply I have to say that the proof filed with the Secretary of the Treasury in November, 1872, showed that said Thomas J. Lamdin gave the information upon which a penalty of $1,100.00 was recovered by compromise by Gotschalk and Spilman, rectifiers and wholesale liquor dealers, in Baltimore, Maryland, the compromise having been approved by the Secretary of the Treasury on January 10, 1873, and the penalty having been paid on January 30, 1873.

While I find and declare that said Thomas J. Lamdin was the first informer in this case, yet I decline to direct the payment of the usual informer's share of the penalty (which would be $490.00), because the question as to whether the informer did not lose his right to a share of the
9 penalty by the repeal of the law giving shares to informers before the compromise in this case was effected is involved in the Ramsey case, now pending in the Supreme Court on appeal by the Government from the Court of Claims.

Respectfully, yours,

D. MANNING,
Secretary.

IV.

That Wm. L. Baillie was duly appointed administrator of the estate of Thomas J. Lamdin, deceased.

V.

The only action taken on the case by the Treasury Department previous to December 10th, 1886, appears by the following letter:

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., October 11th, 1887.

The honorable the ATTORNEY-GENERAL:

SIR: I have the honor to acknowledge the receipt of your letter (R. A. H.), of the 7th instant, asking to be furnished with any book entries showing any action, either by the Secretary of the Treasury or the Commissioner of Internal Revenue, in the case of Wm. S. (L.) Baillie, admr. of the estate of Thomas J. Lamdin, deceased, *vs.* The United States.

In reply you are informed that the "Register of Informer's Claims" kept in the office of the Secretary shows the receipt of Thomas J. Lamdin's application for informer's share in the case of Gotschalk & Spilman, dated April 10, 1872, and under the heading of "how disposed of" the entry is "no action."

This entry was made in accordance with the ruling of the Secretary that an informer lost his right under the section 179 of the act of June 30, 1864, as amended by the act of July 13, 1866 (14 Stat. 145), unless the penalty, fine, or forfeiture, in the case in which he gave information, was fixed by judgement or compromise, and the amount was paid prior to August 1, 1872, when the repeal of said section 179 took effect. In this case the records show that the compromise was not concluded until January 10, 1873.

I have to add that the Commissioner of Internal Revenue had no jurisdiction, and therefore could take no action in cases of this kind.

The petition enclosed by you is herewith returned as requested.

Respectfully yours,

C. S. FAIRCHILD,
Secretary.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as conclusion of law, that the claimant is entitled to recover the sum of four hundred and ninety dollars ($490) on the authority of Ramsey *vs.* The United States, 21 C. Cls., 443. Affirmed in United States *vs.* Ramsey, 120 U. S., 214.

11 IV.—*Final judgment.*

At a Court of Claims, held in the city of Washington, D. C., on the 6th day of February, A. D. 1888, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said William L. Bailee, as administrator of Thomas J. Lamdin, deceased, do have and recover of and from the United States the sum of four hundred and ninety dollars ($490.00).

12 V.—*Application of defendants for and allowance of appeal.*

From the judgment rendered in the above-entitled cause on the 6th day of February, 1888, in favor of claimant, the defendants, by their Attorney-General, on the 8th day of February, 1888, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT A. HOWARD,
Asst. Attorney-General

Filed Feb. 8, 1888.

WILLIAM A. RICHARDSON,
Chief Justice.

Allowed in open court.

13 VI.

In the Court of Claims.

WILLIAM L. BAILEE, ADMR. OF ESTATE OF Thomas J. Lambdin, decd., *vs.* THE UNITED STATES.	No. 15401.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the judgment of the court, of the application of the defendants for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 9th day of March, A. D. 1888.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) No. 1386. The United States, appellant, *vs.* William L. Bailee, as administrator of the estate of Thomas J. Lamdin, deceased. Court of Claims. Filed March 9, 1888.

Office Supreme Court U. S.
FILED
MAR 22 1888
JAMES H. McKENNEY.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, APPELLANT,
vs.
WILLIAM L. BAILLEE, ADMINISTRATOR of the estate of Thomas J. Lambdin, deceased. } No. 1386.

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT AND BRIEF OF ARGUMENT FOR APPELLANT.

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APPEAL FROM THE COURT OF CLAIMS.

STATEMENT AND BRIEF OF ARGUMENT FOR APPELLANT.

STATEMENT OF THE CASE.

This is an appeal from a judgment rendered by the Court of Claims, in favor of the appellees above named against the United States, for the sum of $490.

In pursuance of information first given in December, 1871, by Thomas J. Lambdin, now deceased, to the proper officers of the United States against Gotschalk & Spilman, rectifiers and wholesale liquor dealers, said firm were

proceeded against for violation of the internal-revenue laws. The case was not finally settled until 1873, when it was compromised by the payment by said Gotschalk & Spilman to the United States of $1,100 as or in lieu of penalties. Section 179 of the *Act of June* 30, 1874 (13 Stat. L., 304), as amended by *Act of July* 13, 1874 (14 L., Stat. 145), is as follows:

> That section one hundred and seventy-nine be amended by striking out all after the enacting clause and inserting in lieu thereof the following: That, where it is not otherwise provided for, it shall be the duty of the collectors, in their respective districts, and they are hereby authorized, to prosecute for the recovery of any sum or sums that may be forfeited; and all fines, penalties, and forfeitures which may be imposed or incurred shall and may be sued for and recovered, where not otherwise provided, in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, before any circuit or district court of the United States for the district within which said fine, penalty, or forfeiture may have been incurred, or before any court of competent jurisdiction. And where not otherwise provided for, such share as the Secretary of the Treasury shall, by general regulations, provide, not exceeding one moiety, nor more than five thousand dollars in any one case, shall be to the use of the person, to be ascertained by the court which shall have imposed or decreed any such fine, penalty, or forfeiture, who shall first inform of the cause, matter, or thing whereby such fine, penalty, or forfeiture shall have been incurred; and when any sum is paid without suit, or before judgment, in lieu of fine, *penlly* [penalty], or forfeiture, and a share of the same is claimed by any person as informer, the Secretary of the Treasury,

> under general regulations to be by him prescribed, shall determine whether any claimant is entitled to such share as above limited, and to whom the same shall be paid, and shall make payment accordingly. It is hereby declared to be the true intent and meaning of the present and all previous provisions of internal-revenue acts granting shares to informers, that no right accrues to or is vested in any informer in any case until the fine, penalty, or forfeiture in such case is fixed by judgment or compromise, and the amount or proceeds shall have been paid, when the informer shall become entitled to his legal share of the sum adjudged or agreed upon and received: *Provided*, That nothing herein contained shall be construed to limit or affect the power of remitting the whole or any portion of a fine, penalty, or forfeiture conferred on the Secretary of the Treasury by existing laws.

Under the provisions of the above-cited law and the circular of the Secretary of the Treasury claimant would have been entitled to payment as follows:

Of $500, 50 per cent	$250
Of $600, 40 per cent	240
	490

Section 39 of act June 6, 1872 (17 Stat., 256), is as follows:

> That so much of section one hundred and seventy-nine of the act of July thirteenth, eighteen hundred and sixty-six, as provides for moieties to informers be, and the same is hereby, repealed; and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to

> pay such sums, not exceeding in the aggregate the amount appropriated therefor, as may, in his judgment, be deemed necessary for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, or conniving at the same, in cases where such expenses are not otherwise provided for by law; and for this purpose there is hereby appropriated one hundred thousand dollars, or so much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated. (17 Statutes at Large, 256, 257.)

By section 46 of the same act (p. 258) it was provided as follows:

> That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed: *Provided*, That all of the provisions of said act shall be in force for levying and collecting all taxes properly assessed, or liable to be assessed, or accruing under the provisions of former acts, the right to which has *has* already accrued, or which may hereafter accrue, under said acts, and for maintaining, continuing, and enforcing liens, fines, penalties, and forfeitures incurred under and by virtue thereof. And this act shall not be construed to affect any act done, right accrued, or penalty incurred under former acts, but every such right is hereby saved; and all suits and prosecutions for acts already done in violation of any former act or acts of Congress relating to the subjects embraced in this act may be commenced or proceeded with in like manner as if this act had not been passed.

On the 10th of April, 1872 (prior to the compromise), Lambdin made claim for the informer's share, under the provisions of the circular of the Secretary of the Treasury above referred to.

The "register of informers' claims" kept in the office of the Secretary of the Treasury shows the receipt of Thomas J. Lambdin's application for informer's share in the case of Gotschalk & Spilman, dated April 10, 1872, and under the heading of "how disposed of" the entry is "no action."

> This entry was made in accordance with the ruling of the Secretary that an informer lost his right under section 179 of the act of June 30, 1864, as amended by the act of July 13, 1866 (14 Stat. 145) unless the penalty fine or forfeiture, in the case in which he gave information, was fixed by judgment or compromise and the amount was paid prior to August 1, 1872, when the repeal of said section 179 took effect. In this case the records show that the compromise was not concluded until January 10, 1873. (Letter of Secretary of the Treasury to the Attorney General, Finding 5 Trans. 4)

In reply to a request made by claimant's attorney, dated 1st of November 1886, the Secretary of the Treasury says:

> While I find and declare that said Thomas J. Lambdin was the first informer in this case, yet I decline to direct the payment of the usual informer's share of the penalty (which would be $490) because the question as to whether the informer did not lose his right to a share of the penalty by the repeal of the law giving shares to informers before the compromise in this case was effected is involved in the Ramsay case, now pending in the Supreme Court on appeal by the Government from the Court of Claims. (Letter of Secretary of the Treasury Finding III. Trans 4).

The position of the claimant is that the letter of the Secretary of the Treasury of December 10, 1866, is the determination required by the act of 1866 (*supra*), that the claimant is entitled to said sum of $490, and that it should be paid to him.

The appellant contends:

(1) The said letter of the Secretary is simply a declaration that Lambdin was the first informer.

(2) That it is in no respect a determination in favor of claimant as required by the act of 1866 (*supra*).

(3) That the letter of the Secretary is in effect a refusal to determine that any amount is due claimant.

(4) That the ruling that the act of July 13, 1866 (*supra*), so far as fees to be paid informers is concerned, is repealed by section 39 of the act of June 6, 1872 (*supra*), is correct, and that by reason of such repeal claimant is not entitled to $490 for informers' fees.

(5) That independent of any right that might be derived by claimant, under and by virtue of said law of 1866, there is no legal claim on the part of the claimant. That as by provisions of the act of 1866 no right vested in the informer until the amount of the penalty is fixed either by judgment or compromise, the repeal of that portion of the statute relative to informers' fees would leave him without legal right or remedy.

(6) That prior to the settlement of the claim against Gotschalk & Spilman the statute authorizing the payment of informers' fees in accordance with the act of 1866 was repealed. That therefore, at the time of such repeal, no legal right or claim had vested in claimant.

The court below decided on the authority of *Ramsay* v. *The United States* (120 U. S. R., 214) that claimant is entitled to recover.

ASSIGNMENTS OF ERROR.

The court erred—

(1) In finding, as a conclusion of law, "that the claimant is entitled to recover the sum of $490 on the authority of *Ramsay* v. *The United States* (21 C. Cls. R., 443), affirmed in *United States* v. *Ramsay* (120 U. S. R., 214)."

(2) In ordering, adjudging, and decreeing "that the said William L. Bailee, as administrator of Thomas J. Lambdin, deceased, do have and recover of and from the United States the sum of four hundred and ninety dollars ($490)."

(3) In not dismissing the petition.

BRIEF OF ARGUMENT.

In the case of *Ramsay* v. *The United States* (21 C. Cls. R., 443) the same question was presented as in the case at bar.

Ramsay claimed an informer's fee under the provisions of the act of 1866 (14 Stat., 154) and the circular of 14th August, 1866, above referred to (Finding I, Trans. 2). In consequence of the information given by Ramsay an action was commenced for the recovery of penalties for violation of the internal-revenue laws, which resulted in a compromise in June, 1874, and the payment of a certain

sum of money by the defendant in discharge of its liabilities. It was conceded that he was the informer, as claimed, and that he was entitled to the amount claimed, if the duty and power to make the payment were not taken away by section 39 of the act of June 6, 1872 (17 Stat., 256), repealing the provisions of the act of 1866, *supra*.

Claimant's administrator brought suit in the Court of Claims and obtained judgment. On an appeal in behalf of the Government, this court affirmed the judgment of the Court of Claims by *a divided court*.

The same question is again presented in the case at bar to this court.

I.

The Court of Claims has no jurisdiction.

> The Secretary of the Treasury, under general regulations to be by him prescribed shall determine whether any claimant is entitled to such share as above limited, and to whom the same shall be paid and shall make payment accordingly.

As a matter of fact, in this case the decision of the Secretary of the Treasury is adverse to the claim. Is it true the "register of informers' claims" in the Treasury in the case of Gotschalk & Spilman shows as to the Lambdin claim there is an entry of "no action." But it also appears from the letter of the Secretary of the Treasury (Trans., 5) that this entry was made in accordance with "the ruling of the Secretary that an informer lost his right under the section 179 of the act of June 30, 1864, as amended by the act of July 13, 1866 (14 Stat., 145), unless the penalty, fine or forfeiture, in the case in which

he gave information, was fixed by judgment or compromise, and the amount was paid prior to August 1, 1872, when the repeal of said section 179 took effect."

In the letter of the Secretary of the Treasury to claimant's attorney, dated December 10, 1866 (Trans., 4), the decision is adverse to claimant.

> While I find that said Thomas J. Lambdin was the first informer in this case, *I decline to direct the payment of the usual informer's share of the penalty.* * * *

In the case of *Ramsay* v. *The United States* (14 C. Cls. R., 373), Richardson, J., says:

> If the Secretary of the Treasury had decided in Claimant's favor *and certified his decision to the accounting officers*, and they had rejected the claim, the case would have been like that of Kaufman, and this court would have had jurisdiction to enforce payment; but without such a decision in his favor by the officer designated by law to determine the matter, he has no standing in court.

The decision in the case of *Ramsay*, *supra*, has had the force of law since it was rendered in 1875. It has been recognized as a guide in determining the judicial powers of Department officers. If the court was correct in its decision, upon exactly the same facts being presented in the present case, the petition should have been dismissed on the grounds of the prior decision. The very learned opinion delivered in support of such decision, and reported in 14 Court of Claims Reports, page 371, is presented to this court in support of the present appeal.

The court below could only obtain jurisdiction to enforce

an award of the Secretary. The finding a fact in a case is not an award. If no decree is made there is no decree to enforce. If this court sustain the principles decided in the opinion rendered in 14 Court of Claims Reports, page 371, then a judicial construction of the repealing act of 1872, *supra*, is not requisite, the decision of the court below should be reversed, and the case remanded with directions to dismiss the petition.

II.

The ruling of the Secretary of the Treasury that by reason of the repealing act of 1872 claimant is not entitled to informer's fees under the provisions of the act of 1866 is correct. Under the following provision of the act of 1866 no right to payment could vest in an informer prior to judgment or compromise:

> It is hereby declared to be the true intent and meaning of the present and all previous provisions of internal-revenue acts granting shares to informers that no right accrues to or is vested in any informer in any case until the fine, penalty, or forfeiture in such case is fixed by judgment or compromise and the amount and proceeds shall have been paid, when the informer shall become entitled to his legal share of the sum adjudged or agreed upon and received: *Provided*, That nothing herein contained shall be construed to limit or affect the power of remitting the whole or any portion of a fine, penalty, or forfeiture conferred on the Secretary of the Treasury by existing laws.

Not only did no right vest in Mr. Lambdin prior to the date of the compromise, but the Secretary of the

Treasury had the power at any time to deprive him of the benefit conferred upon him as informer by remitting the penalty, etc.

It is admitted that where a perfect right of action has vested, the repeal of a statute will not divest the right. In this case, however, no right had vested. Claimant's entire claim is founded on the statute and subject to its provisions. He has rendered no service recognizable by the law, independent of a service created by the statute.

Independent of the express terms of the statute, he would not, as an informer, have any vested right in a penalty until after judgment.

Much stronger cases than the present were decided adversely to informers by this court, *Confiscation Cases* (7 Wall., 454). Judgment in a number of these cases had been found in favor of the United States and for the use of the informer. This court held that the informers had no such vested interest as would prevent the remission of the penalty, even after judgment, and the cases were dismissed on motion of the Attorney-General.

A defendant is discharged by the repeal of the law. (*Norris* v. *Crocker*, 13 How., 429; *United States* v. *Mann*, 1 Gallison, 177.) The section of the statute authorzing informers' pay being repealed, the power of the Secretary to direct payment is, as a consequence, gone. The claimant had rendered no service recognizable at law. Even had he rendered such service, no right having vested in him prior to the repeal of the statute, he would have no legal claim under the statute. The measure of value for the service was created by the statutes. The statute being repealed, no measure of damage exists. No judg-

ment can be rendered in a suit after the repeal of the act under which it was brought. (*Ex parte* McCardle, 7 Wall., 506–514, and cases cited, viz, *Norris* v. *Crocker*, 13 How., 429; *Insurance Company* v. *Ritchie*, 5 Wall., 541.) As to effect of repeal of statutes, see Sedgwick on Statutory and Constitutional Law, p. 129, *et seq.*

It was held by the court below in the *Ramsay Case* (21 C. Cls., 443) that—

> The authorities cited relate only to cases where the law giving a penalty is repealed. There is no doubt that the repeal of a statute puts an end to all actions under it. That is not this case. The law giving a penalty was not repealed. It was the power to promise to an informer a share of the penalty that was repealed.

The fallacy of this position is manifest upon an examination of the law; a distinction without a difference is made.

By the *Act of* 1866 (14 Stat. L., 145) it is provided:

> And when not otherwise provided for, such share as the Secretary of the Treasury shall by general regulations provide, not exceeding one moiety nor more than $5,000 in any one case, shall be to the use of the person, to be ascertained by the court, which shall first inform of the cause, matter, or thing whereby such fine, penalty, or forfeiture shall have been incurred; and when any sum is paid without suit, or before judgment, in lieu of fine (penalty) or forfeiture, and a share of the same is claimed by any person as informer, the Secretary of the Treasury, under general regulations to be by him prescribed, shall determine whether any claimant is entitled to such share as above limited, and to whom the same shall be paid, and to make payment accordingly.

Section 39 of the *Act of June* 6, 1872 (17 Stat. L., 256), is broad and unmistakable in its terms.

> So much of section one hundred and seventy-nine of the act of July thirteenth, eighteen hundred and sixty-six, as provides for moieties to informer be, and the same is hereby, repealed.

The repeal of the law of 1866, so far as Mr. Lambdin is concerned, it is submitted, is absolute, unconditional, and unqualified.

It is true that by said section 39 the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to pay such sums as may, in his judgment, be necessary. As to whether any sum shall be paid is a subject for the discretion of the Commissioner of Internal Revenue. It is in no sense a reservation of the powers conferred on the Secretary of the Treasury by the act of 1866; it is a new power conferred on the Commissioner of Internal Revenue by the act of 1872. The power thereby conferred is not retroactive but is prospective as to its operation. The power so conferred on the Commissioner in no degree limits the force and effect of the repeal. Nor does the proviso referred to by the court (sec 46, 17 Stat. L., 258) in any way modify or control the full force and effect of the repealing act so far as it relates to the payment of informer's compensation. Such proviso is in effect a saving clause for the Government, not for informers.

By the act of 1866, upon which this claim is founded, the Secretary of the Treasury is required to "determine whether any claimant is entitled to such share as above

limited, and to whom the same shall be paid, and shall make payment accordingly."

The Secretary of the Treasury has not determined that Lambdin was entitled to any share of the penalties collected from Gotschalk & Spilman.

He has found that Lambdin was the first informer, but he has not found that he is entitled to a share of the penalty. He has not awarded or ordered any payment to be made claimant. The accounting officers have therefore not refused payment. On the contrary, the Secretary of the Treasury has refused to direct payment.

It is submitted that the ruling of the Secretary of the Treasury, that the claimant is not entitled to compensation under the said act of 1866, by reason of its repeal by the act of 1872, is correct. It is submitted that no legal right has vested in claimant for any portion of the penalty obtained by compromise. That if he is aggrieved he must look to Congress, and not to the courts, for his remedy.

Respectfully,

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Attorney-General.
ROBERT A. HOWARD,
Assistant Attorney-General.
F. P. DEWEES,
Assistant Attorney.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1887

No. 1386.

THE UNITED STATES,

APPELLANT,

v.

WILLIAM L. BAILEE,

ADMINISTRATOR OF THE ESTATE OF THOMAS J. LAMDIN, DECEASED.

BRIEF FOR APPELLEE.

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Brief for Appellee.

I.

STATEMENT OF THE CASE.

The statement of the case presented by the Attorney-General is not controverted.

II.

BRIEF.

Although Lamdin, the informer, filed his claim for his share of the penalty as early as 1872, no action was taken thereon for about fourteen years.

In 1886 the application was renewed by his administrator, the present claimant. On December 10, 1886, the

Secretary of the Treasury, by letter addressed to the claimant's attorney (p. 4 of record), "found and declared that said Thomas J. Lamdin was the first informer in this case," and that his share under the terms of the Treasury circular was $490; but declined to direct payment of it at that time, "because the question as to whether the informer did not lose his right to a share of the penalty by the repeal of the law giving shares to informers before the compromise in this case was effected is involved in the Ramsay case, now pending in the Supreme Court on appeal by the Government from the Court of Claims."

On January 17, 1887, this court announced that it was equally divided in opinion in the Ramsay case, thus affirming the judgment of the Court of Claims in favor of the claimants. *United States* v. *Ramsay*, 120 U. S. 214.

Under a familiar rule, that decision, although as binding in that particular case as if rendered upon the concurrence of all the judges, constituted no precedent for the action of the Treasury Department upon any other case of like character. *Durant* v. *Essex Co.*, 7 Wall. 107.

Suit was therefore instituted in the Court of Claims, which gave judgment in favor of the claimant on the authority of its previous decision in *Ramsay* v. *United States*, 21 C. Cls. 443.

In the Ramsay case the Secretary of the Treasury decided Ramsay to be the informer for the express purpose of giving him a standing in the Court of Claims, stating in his letter to the claimant's attorney (120 U. S. 222), "It is presumed that, upon this official action, your client will now be in a condition to prosecute his claim in the Court of Claims, and that that court will have full jurisdiction of the case."*

* We desire, in passing, to call attention to the erroneous statement in the report of the decision of the Court of Claims in the Ramsay case, that, "This case was referred by the Secretary of the Treasury, under

As the Secretary's letter in this case refers to the Ramsay case, it is fair to presume that the award in this case was made for the same purpose. It is contended, however, by counsel for the United States, that the award is insufficient in form.

The law prescribes no special form for awards of this character; and whenever the Secretary signifies in any appropriate manner his decision as to who is the informer and the share to which he is entitled, the right of the informer vests.

The award was made in the shape of an official communication to the claimant's attorney. It is apparent on its face that it was made for the purpose of giving the claimant a standing in the Court of Claims. True, no formal reference of the case under section 1063 of the Revised Statutes was made, but that was not necessary. The Secretary having determined all the material questions in the case favorably to the claimant, the law itself gave the right of action to him as the person "determined" by the Secretary of the Treasury as "entitled to such share as above limited."

The fact that the Secretary declined to order the payment of the share certainly does not operate against the claim. A somewhat similar question was before this Court in *Butterworth* v. *Hoe*, 112 U. S. 50, where it appeared that the Commissioner of Patents had decided the relator to be entitled to a patent for his invention, but declined to issue the patent because his decision in favor of the relator had been reversed upon appeal by the Secretary of the Interior. This Court, however, having decided that the Secretary of the Interior had no appellate jurisdiction over

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the Revised Statutes, § 1063," (21 C. Cls. 444). This is a mistake. The suit was commenced by the voluntary petition of the claimants, suing upon the letter of the Secretary of the Treasury *as an award*. (See the report in this Court, 120 U. S. 214, and the printed record in the case, No. 1031 of October Term, 1886).

the decisions of the Commissioner of Patents, held that a mandamus was rightly awarded to compel the Commissioner of Patents to carry out his own decision in favor of the relator. This Court said:

"Some question is made as to the remedy. We think, however, that *mandamus* will lie, and that it was properly directed to the Commissioner of Patents. He had fully exercised his judgment and discretion when he decided that the relators were entitled to a patent. The duty to prepare it, to lay it before the Secretary for his signature, and to countersign it, were all that remained; and they were all purely ministerial. These duties he had failed and refused to perform merely out of deference to the claim of the Secretary to reverse and set aside the decision on the merits in favor of the relators. This we have held not to be a valid excuse. The case falls clearly within the principles acted upon in *Commissioner of Patents* v. *Whitely*, 4 Wall. 522."

So in the present case the Secretary of the Treasury has decided Lamdin to be the informer; has fixed the amount of his share of the penalty received. His refusal to pay is based entirely upon doubts as to whether a repealing statute has not cut off his right to make the payment. See, also, *Johnson* v. *Towsley*, 13 Wall. 72.

It cannot be held that the right of Lamdin, or his administrator, to obtain a decision and award of the Secretary was defeated by the Department having at any previous time adopted and applied to other cases a construction of the repealing act unfavorable to his case, for that decision had never been made in this particular case, but had only been made in certain other cases; and certainly no Secretary is bound by law to accept a construction previously adopted by the Department if satisfied that it is erroneous. It was so held by this Court in *United States* v. *Macdaniel*, 7 Pet. 1.

For the same reason no statute of limitations runs against this claim. The statute vested the Secretary of the Treasury with the sole power of determining the first informer and ascertaining his share; and until that determination was made, the claimant had not even a *prima facie* right, and was wholly without standing in the Court of Claims. It was so held by that Court in *Ramsay* v. *United States*, 14 C. Cls. 367, and to the same effect are the decisions of this Court in *United States* v. *Kaufman*, 96 U. S. 567, and *United States* v. *Louisiana*, 123 U. S. 32, 37. The right of Lamdin, or his representatives, to sue in the Court of Claims, dated only from December 10, 1886, when the Secretary of the Treasury ascertained and determined him to be the informer, and calculated his share at $490.

As to the question whether the repeal of the moiety statute divested Lamdin of the right to recover for information given by him while the statute was in full life and effect, the general principle involved in the question has been frequently decided by this Court. It is true that the statute under which the information was given declares that "no right accrues to or is vested in any informer in any case until the fine, penalty, or forfeiture in such case is fixed by judgment or compromise and the amount of proceeds shall have been paid," but it adds, "*when* the informer *shall become entitled* to his legal share of the sum adjudged or agreed upon and received." It thus not only negatives the right of the informer to any share of the penalty until it shall have been paid, but it proceeds affirmatively to declare that upon its being paid the informer *shall* become entitled to his share.

The repealing statute of 1872, even if it contained no saving clause, would not under well-settled principles have affected the claimant's right to compensation for work done by him previous to the repeal; but it is accompanied by a

saving clause which was evidently designed to prevent any implication of a desire to interfere with existing contracts. It says: "And this act shall not be construed to affect any act done, right accrued, or penalty incurred under former acts, but every such right is hereby saved; and all suits and prosecutions for acts already done in violation of any former act or acts of Congress relating to the subject embraced in this act may be commenced or proceeded with in like manner as if this act had not been passed."

We may add, too, that at the time this repealing statute was passed, in 1872, the act of February 25, 1871, 16 Statutes at Large, 432, was in full force and effect. It provides that "the repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute unless the repealing act shall so expressly provide; and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability." This act now forms section 13 of the Revised Statutes. It has been construed by one of the justices of this Court, holding the circuit court, as applicable even to criminal prosecutions. *United States* v. *Ulrici*, 3 Dill. 532. And if given such a wide scope as to extend even to a criminal prosecution, in which all doubts are resolved against the Government, how much more properly ought it to be held applicable to the enforcement of an honest contract resulting in the collection of revenue to the Government!

In the case of *Jones* v. *Shore's Executor*, 1 Wheat. 462, the statute gave moieties to certain officers of the customs, and the controversy was between the representative of the deceased officer who seized the goods and his successor, who was in office at the time the forfeiture was actually realized.

This Court (Justice Story delivering the opinion) decided in favor of the seizing officer's representative, and put it upon the ground that (p. 471) "a party entitled to a share of a thing forfeited acquires by the seizure an *inchoate right*, which is consummated by a decree of condemnation, and when so consummated, it relates back to the time of the seizure." And again (p. 472): "The law, therefore, deems him a party having a real substantial interest in the cause, and not a mere expectancy—'a fleeting hope that only keeps its promise to the ear, but breaks it to the sense.'"

This reasoning is fully applicable here. Lamdin, by giving his information, acquired an inchoate right, conditioned upon the recovery by the Government of any money from the law-breaker against whom he had informed. Upon the recovery of that money, the informer's right related back to the giving of the information, and the Government cannot, without a gross breach of the public faith, plead in bar of this action intervening statutes repealing the law which held out to him the inducement to proffer his knowledge and services in behalf of its revenue.

The above-cited provision that no right accrues to any informer until the amount of the fine, penalty, or forfeiture shall have been fixed and paid was merely designed to cut off any claim which an informer might make to a share of penalties which he might claim should have been recovered, or would by proper action on the part of officers of the Government have been recovered, but which were not actually recovered. It also prevents the informer from claiming any right to insist upon the application of the law in all its strictness and with merciless severity against delinquent taxpayers who may have grounds for the equitable consideration of the Government. This was all that was decided in the *Confiscation Cases*, 7 Wall. 454, relied on by counsel for the United States. It is designed to leave

unimpaired that power of mercy which the law vests in the Secretary of the Treasury to compromise or even wholly to remit penalties incurred in cases where he may think their infliction would be too rigorous a punishment for a perhaps undesigned violation of the law. It, in short, makes the informer's reward a wholly contingent one. It prevents the Treasury from being drawn upon to pay for the services of informers, and requires that those services shall be compensated entirely out of the funds recovered through the information given, and in no other manner, and from no other source. It certainly never was intended to mean that the Government might receive the fruits of the information, and by abrogating the contract the moment before such receipt might prevent the informer from claiming its benefits. Such an arrangement could hardly be called a contract; it would put one party at the mercy of the other, and would be so obviously inequitable and unjust that the law cannot be interpreted to have that meaning. The right of the informer, it is true, does not become vested and certain until the recovery of the penalty, but when the penalty is recovered, then, in the language of the law, "the informer shall become entitled to his legal share of the sum adjudged or agreed upon and received." As we have said above, even if the repealing act had contained no saving clause it might well be contended that the repeal did not destroy or in the least affect the claimant's rights. It was said by this Court in a somewhat similar case (*Steamship Co.* v. *Joliffe*, 2 Wall. 450, 457, 458): "The claim of the plaintiff below for half-pilotage fees, resting upon a transaction regarded by the law as a *quasi* contract, there is no just ground for the position that it fell with the repeal of the statute under which the transaction was had. When a right has arisen upon a contract, or a transaction in the nature of a con-

tract, authorized by statute, and has been so far perfected that nothing remains to be done by the party asserting it, the repeal of the statutes does not affect it or an action for its enforcement. It has become a vested right which stands independent of the statutes."

So, too, in another case decided by this Court (*Twenty-per cent. Cases*, 20 Wall. 179), the facts were that a joint resolution had been passed by Congress on the 28th of February, 1867, allowing certain persons in the service of the United States twenty per cent. on their salaries, but that on the 12th of July, 1870, an act had passed repealing all acts and joint resolutions or parts thereof granting extra pay. It was claimed on behalf of the Government, and in opposition to the claims set up by various claimants, that the repeal of the joint resolution took away all right to recover any compensation under it. The Court, however, rejected such a narrow and unjust interpretation of the repealing act, and said (pages 187, 188): "Courts of justice agree that no statute, however positive in its terms, is to be construed as designed to interfere with existing contracts, rights of action, or with vested rights, unless the intention that it shall so operate is expressly declared or is to be necessarily implied; and pursuant to that rule courts will apply new statutes only to future cases, unless there is something in the nature of the case or in the language of the new provision which shows that they were intended to have a retroactive operation. Even though the words of a statute are broad enough in their literal extent to comprehend existing cases, they must be construed as applicable only to cases that may hereafter arise, unless the language employed expresses a contrary intention in unequivocal terms. Such a law, if passed by a State, and construed to have the effect claimed for it in this case by the appellants, would be unconstitutional and void; but it is not necessary

to discuss any such proposition in this case, as there is not a word in the repealing act to support the conclusion that Congress intended to rescind any antecedent contract, or to enact any bar to the right of recovery in such cases where the service had been faithfully performed before the repealing act was passed."

The present case, however, is stronger than either of the two cases just cited. In neither of those cases did the repealing act contain any saving clause, yet, notwithstanding the absence of the saving clause, it was held that, where the party asserting the right had done all he could to gain his rights, the repeal of the statute had no effect upon them and was no bar to any proceedings for their enforcement. This act declares that it shall not be construed to affect any "act done, right accrued, or penalty incurred" under former acts; that is, that it shall not affect the legal validity or full effect of an *act done*, such as the imparting of information by any person under promise of reward. Neither shall it affect any *right accrued;* and in this case there was an accrued right which this claimant had gained by a full compliance with the terms of reward held out by the Government—a right contingent on a future event, it is true, but which, upon the happening of that event, became fixed and certain. Neither was it to affect any *penalty incurred;* that is, the penalty incurred was to be paid by the offender and distributed among those entitled to it just as if this act had not been passed. Nay, more, as if this were not enough, the act goes on to provide that "all suits and prosecutions for acts already done in violation of any former act or acts of Congress relating to the subjects embraced in this act may be commenced or proceeded with in like manner as if this act had not been passed." In other words, all proceedings for the recovery of any penalty or of any tax shall continue, both as to the method of

proceeding for the recovery, the liability of the defendant, and the distribution of the proceeds, as if this act had not been passed. Could stronger language be used to indicate the intention of Congress not to interfere with past rights but to leave them in full operation? What would be said of a contract for contingent fees in which it were provided that the right to the fee should not become fixed and vested until the recovery of the money, and the client should, after the services of the attorney were all performed and he was about to realize their benefits, revoke and annul the contract, and claim the right to do so simply because the rights of the attorney in his fee had not become finally fixed and vested by the payment of the money? It seems absurd that such a claim would be capable of being asserted in seriousness by any person of ordinary moral perceptions. Yet what else is it that is set up on behalf of the Government in this case if it be claimed that Lamdin's rights were divested by the repeal of the moiety act?

The construction contended for by the United States would in effect be to hold that section 46 was only for the benefit of the United States, whereas the provision protects, by its terms, all "acts done," without reference to whether by the United States or individuals, and as this information given was an "act done" for the very purpose of securing the informer's reward, it is clearly within the saving clause. Any other rule would permit the Government to take advantage of all the information which it had in its possession at the time of the passage of the repealing act, and to prosecute offenders without regard to the repeal, and then to deny to the informer the reward of his labors on the ground of this very repeal which it had just refused to allow to be set up as the defense to a criminal prosecution! A result so absurd and inequitable needs only to be stated to be condemned.

Saving clauses of the character of that in question in this case are to be construed with great liberality, and as saving every right that can possibly be brought within their terms (Sedgwick on Statutory and Constitutional Law, 47). Certainly no construction should be permitted that will impute to the supreme legislative power a desire to do injustice if such a construction can possibly be avoided (1 Blackstone's Commentaries, 60). It is very doubtful if the repealing act of 1872 could be constitutionally construed so as to take away the rights of the claimant after he had done all that was required under his contract. The fifth amendment to the Constitution of the United States provides that no person shall be deprived of life, liberty, or property without due process of law. The word *property* as used in this amendment does not refer merely to corporeal and tangible property, but equally applies to rights under contracts. Cooley on Constitutional Limitations, chap. II; *Osborne* v. *Nicholson*, 13 Wall. 654.

As the conclusion of law in this case (p. 5) states that the case is decided on the authority of *Ramsay* v. *United States*, 21 C. Cls. 443, it seems only fitting and appropriate that the opinion of the Court of Claims in that case be laid before this Court in this case. We therefore subjoin, as an appendix to this brief, the able opinion delivered by Judge Scofield as the unanimous opinion of that Court in the Ramsay case, and beg leave to adopt the same *in toto* as a portion of our argument. We submit that its reasoning is unanswerable and should be followed by this Court by an affirmance of the judgment in the case now at bar.

GEORGE A. KING,
I. G. KIMBALL,
Attorneys and of Counsel for Appellee.

APPENDIX.

Opinion of the Court of Claims in Ramsay *v.* United States.

From 21 Court of Claims Reports, page 443.

Scofield, J., delivered the opinion of the court:

This case comes up on demurrer. The facts are stated in the petition and in the following letter of the Secretary of the Treasury, attached thereto:

Treasury Department,
Office of the Secretary,
Washington, D. C., November 6, 1885.

George A. King, Esq.,
Attorney for G. Alexander Ramsay,
1420 *New York avenue, Washington, D. C.*

Sir: In your letter of the 31st ultimo, in behalf of your client, G. Alexander Ramsay, you state that all you ask is "that you, Mr. Secretary, will adjudicate and decide upon the evidence before you a plain, simple question of fact, never before considered or decided in any manner by yourself or any of your predecessors, or any of your or their assistants, namely, whether Mr. Ramsay was, or was not, the first informer whereby the sum of $5,000 penalties, and $10,694.03 tax, interest, and costs, were recovered from the Houston and Texas Central Railway Company, for frauds upon the revenue; and that, having decided this question, you will refer the case to the Court of Claims, under section 1063 of the Revised Statutes, for trial and adjudication."

In reply I have to say that the claim of your client referred to, although presented to the Secretary of the Treasury in the year 1875, as shown by the records of this office, has never been formally rejected by any Secretary of the Treasury.

The records also show that no Secretary of the Treasury

has ever ascertained and determined whether there was any informer in the case referred to, nor has it ever been determined and declared formally by any Secretary whether your client, Mr. Ramsay, was or was not the first informer in this case.

All that is shown by the records of this office on this point is that Mr. Ramsay was notified by the Commissioner of Internal Revenue that he was not entitled to the share for which he made application, because the act of June 6, 1872, repealing informers' shares, went into effect before the case in which he claimed the share had been compromised, and that the claim was merely marked "too late," that no finding or award was made, and that no letter of rejection was written by the Secretary to the claimant.

In this state of the case I see no objection to complying with your request, so far as to state that it clearly appears from the evidence on file in this case that your client, George Alexander Ramsay, was the first informer against the Houston and Texas Central Railway Company, and that the information given by him led to the recovery from said company of penalties amounting to $5,000.

The informer's share of that amount would have been $1,700, under the schedule of shares prescribed by the Secretary of the Treasury in a circular issued by him August 14, 1866, pursuant to the authority conferred by section 179 of the act of June 30, 1864 (13 Stat. 305), as amended by the act of July 13, 1866 (14 Stat. 145). This amount was not paid, because said section 179 was repealed by section 39 of the act of June 6, 1872 (17 Stat. 256), which took effect August 1, 1872 (section 47), and the Department held, under the wording of said section 179, viz: "That no right accrues to or is vested in any informer in any case until the fine, penalty, or forfeiture in such case is *fixed* by judgment or compromise, *and* the amount or proceeds shall have been *paid;*" that, unless the amount of the fine, penalty, or forfeiture had been both *fixed* and *paid* to the Government prior to August 1, 1872, no share of the same could be paid to the informer, and that, as the case in question was not compromised until in 1874, Mr. Ramsay was not entitled to receive the allotted share.

That the present Secretary is *not* bound to accept and act upon this construction of the law is made plain by the decision of the Supreme Court of the United States in the case of the United States *v.* MacDaniel, 7 Peters, 1, wherein it said: "It will not be contended that one Secretary has not the same power as another to give a construction to an act which relates to the business of his Department."

Nevertheless, as the construction referred to has been applied, as I am informed, to a large number of cases, and has been aquiesced in from 1875 to the present time, I prefer not to set it aside without the authority of a *judicial* construction, and therefore I decline to award or order the payment of the share claimed by Mr. Ramsay in this case.

It is presumed that upon this official action your client will now be in a condition to prosecute his claim in the Court of Claims, and that that court will have full jurisdiction of the case. Very respectfully,

D. MANNING,
Secretary.

The case turns upon the construction to be given to the statutes, which we shall quote, and to the force and effect of the Secretary's letter.

It is not denied that the claimant's intestate was the first and only informer against the Houston and Texas Central Railway Company, and that the information furnished by him led to the recovery of taxes and interest amounting to $10,694.03, and penalties amounting to $5,000. Nor is it denied that the informer's share of these penalties, under the law and regulations of the Secretary, amounted to $1,700. (Act of July 13, 1866, ch. 184, sec. 9, amending sec. 174 of the act of 1864, 14 Stat. L., 145). But several objections are urged against a recovery.

(1) The statute under which the information was given was repealed before the penalties were fixed and paid. The repealing act (17 Stat. L., 256), which took effect August 1, 1872, is as follows:

"That so much of section 179 of the act of July 13, 1866, as provides for moieties to informers be, and the same is hereby, repealed; and the Commissioner of Internal Reve-

nue, with the approval of the Secretary of the Treasury, is hereby authorized to pay such sums, not exceeding in the aggregate the amount appropriated therefor, as may, in his judgment, be deemed necessary for detecting and bringing to trial and punishment persons guilty of violating the internal-revenue laws, or conniving at the same, in cases where such expenses, are not otherwise provided for by law; and for this purpose there is hereby appropriated $100,000, or so much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated."

It will be observed that the informer's share was earned before the repealing act was passed, but the condition which was to precede payment had not then happened, and did not happen until June, 1874, nearly two years after. The service upon which the claim is based had not only been rendered, but it had been recognized and acknowledged by the Department. It had not been paid for, because its value could not, under the law, be ascertained until it was known how much benefit the Government would derive from it. If, in the end, money should be brought into the Treasury in the shape of penalties through his services, the informer was to have his share of it; otherwise, he was to have nothing for his time and trouble. The repeal of the law did not blot out the fact that the service had been rendered, nor did it forbid the officers of the law to use the information for the benefit of the Government. On the contrary, they were specially authorized, through this information, to collect the delinquent taxes and to assess and collect penalties. Nor did it forbid the Secretary to accept of such service in the future, but only provided a different mode of compensation.

Why, then, should not the claimants be paid for this service? Because, it is said, the law provides "that no right accrues to, or is vested in, any informer, in any case, until the fine, penalty, or forfeiture in such case is fixed by judgment or compromise, and the amount of proceeds shall have been paid, when the informer shall become entitled to his legal share of the sum adjudged or agreed upon and received" (Act of July 13, 1866, 14 Stat. L., 146).

The right to demand payment does not accrue or vest under this law until the penalty is actually paid into the

Treasury. Of course not. That is the agreement. But the law does not thereby intend to say that after the information is given, accepted, and acted upon, that no obligation rests upon the Government to stand by its promise, after the penalty is paid into the Treasury. It cannot be that Congress intended to accept the fruits of this always unpleasant, and often dangerous, service, and in the same paragraph repudiate its promise to divide. This repealing law does not prohibit payment for this kind of information. On the contrary, it exchanges this uncertain and contingent mode of compensation in the past for an agreed and certain one in the future. It can hardly be supposed that, in making this change, Congress intended to provide that services already rendered should be paid for neither under the old nor the new system.

The authorities cited relate only to cases where the law giving a penalty is repealed. There is no doubt that the repeal of such a statute puts an end to all actions for penalties pending under it. That is not this case. The law giving a penalty was not repealed. It was the power to promise to an informer a share of the penalty that was repealed. This repealing act, in effect, provided that no more such promises should be made; but it did not, at least in terms, provide that promises already given and entirely fulfilled by the promisee should be recalled without recompense.

The repealing act has a saving clause which throws some light upon this question. It is as follows:

"That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed: *Provided*, That all the provisions of said act shall be in force for levying and collecting all taxes properly assessed, or liable to be assessed, or accruing under the provisions of former acts, the right to which has already accrued, or which may hereafter accrue, under said acts, and for maintaining, continuing, and enforcing liens, fines, penalties, and forfeitures incurred under and by virtue thereof. And this act shall not be construed to affect any *act done*, *right accrued*, or *penalty incurred* under former acts, but every such right is hereby saved, and all suits and prosecutions for acts already done in violation of any former act or acts of Congress relating to the

subjects embraced in this act may be commenced or proceeded with in like manner as if this act had not been passed."

This is not as clear as it might be, but, taken in connection with other considerations, we think it should be held to save the contingent rights of the claimants, if they would otherwise be lost.

(2) It is contended that the Secretary of the Treasury alone has power to adjudicate the rights of informers under the act of July 13, 1866 (14 Stat. L., 145). The clause relating to this case says: "The Secretary of the Treasury, under general regulations to be by him prescribed, shall determine whether any claimant is entitled to such share as above limited, and to whom the same shall be paid, and shall make payment accordingly." The defendants are doubtless right in this contention.

The Secretary, however, has decided that "George Alexander Ramsay was the first informer against the Houston and Texas Central Railway Company, and that the information given by him led to the recovery from said company of penalties amounting to $5,000;" and that "the informer's share would have been $1,700 under the schedule of shares prescribed by the Secretary of the Treasury in a circular issued by him August 14, 1866." The Secretary adds that "this amount was not paid because section 179 was repealed by section 39 of the act of June 6, 1872" (17 Stat. L., 256). The Secretary concludes his letter as follows:

"Nevertheless, as the construction referred to has been applied, as I am informed, to a large number of cases, and has been acquiesced in from 1875 to the present time, I prefer not to set it aside without the authority of a *judicial* construction, and therefore I decline to award or order the payment of the share claimed by Mr. Ramsay in this case.

"It is presumed that upon this official action your client will now be in a condition to prosecute his claim in the Court of Claims, and that that Court will have full jurisdiction of the case."

Thus it appears that the Secretary did, on November 6, 1885, decide all the material facts in the case, and that the claimant's intestate was entitled to $1,700, the informer's

share under the act of 1866. That was all he was required or authorized to decide under that act. There was nothing more for him to decide, but there was something more for him to do, to wit, to "make payment accordingly." This injunction he has not followed and therefore the claimants come to this Court.

The Secretary gives his reason for not paying the claim, or, as he states it, for declining "to award or order payment," that section 179 was repealed and he was in doubt whether his authority to make payment was not thereby taken away.

We are inclined to believe that the failure "to award or order payment," so far from depriving this court of jurisdiction, is the very fact out of which jurisdiction arises. It is the neglect to pay the amount found by the Secretary to be due to the claimants that they complain of. The question which the Secretary has failed to decide, to wit, whether the act of 1872 forbids the payment of the informer's share, is a question which he was not required or authorized to decide under the act of 1866. Indeed, the question did not arise under that act, but under the act of 1872, and therefore the decision of it was not given exclusively to him. The question arose only in the ordinary administration of his office. It is a proper question for the courts. The Secretary so regarded it and intimated to the claimants that it should be decided by the Court of Claims.

When the *case of Ramsay* (14 C. Cls. 367) was before the Court several years ago, and was dismissed for want of jurisdiction, the Secretary of the Treasury had made no decision *on the merits* in favor of the claimant, and we held that such a decision in the matters entrusted to his determination in the act of 1866 was necessary before an action could be maintained by one who claimed to be an informer.

The facts found do say, following the language of the petition, that the Secretary had rejected the claim, but, it was added, "for the reason stated by the Commissioner" in his letter therein set out. From that letter it appears that the Commissioner held that the claimant did not appear to be entitled to any compensation, *because the act authorizing it had been repealed;* that is, he merely declined to

act upon the material questions which, if decided in the claimant's favor, would have laid the foundation for an action in this court, even if the Secretary had refused to pay this amount.

Since then the Secretary has decided the material facts in favor of the claimants, and therefore this action may be maintained.

The demurrer is overruled with leave to the defendants to plead to the petition within ten days. If the defendants decline so to plead judgment will be entered for the claimants in the sum of $1,700.

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No. 3054. B & P. R.R. Co. v. Dist. Col. } p. 15.

South I street

Supr. Ct. Dist. of Col. Law, No. 16783. Dist. of Col. vs. B. & P. R.R. Co. = "Exhibit A" with Bill of Exceptions.

Virginia Avenue

879

7th. Street east

6th. Street east.

880

TUNNEL HOUSE | No. 610 TUNNEL SALOON | No. 616 | No. 618 | No. 620 | No. 622 | No. 626.

Point shown by Kling and others where Barnes jumped over the wall. Height of wall on the railroad side 6½ ft. to top of coping.

32.25' | 158¾ ft. | 113½' | 13½ ft.

TUNNEL WALL

80' Balt. and Potomac R.R.

TUNNEL WALL

Watch Box.

Plat of part of the City of Washington Showing the location of the Balt. and Potomac R.R. in relation to the Barnes's accident for Enoch Totten Esq. Atty &c.

Surveyed by Wm. Forsyth, Surveyor &c.

Nov. 1880.

Scale, 30 ft. to 1 in.

FLAG FOOTWAY

FLAG FOOTWAY

South K street.

Market house Square

80' Street

WHERE H. KLUG LIVED WHEN ACCIDENT OCCURED.

No. 631 | No. 633 | No. 635

ALLEY.

No. 637

881

132
No. 387
Murray et al.
v.
Pardee
} p. 181.

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Limestone 20×12×8 ins No. 2.

Limestone 16×12×10 ins. No 3.

T. 7 N. R. 13 W.
Unsurveyed

No 4 Limestone 14×12×5 ins.

Limestone 13×12×4 ins No 1.

Lot No 44-A

943 ft.

1480.00

S. 39° 30' E. 1480 ft.

Providenta W Lode

Speckled

Gem Lode

Discovery Shaft

Initial point

Discovery Shaft

Lot No 37

Sucker Lode

No 5 Granite 18×14×6 ins.

No 6 Granite 30×12×7 ins.

DIAGRAM

Showing the Conflict

BETWEEN

LOT No 37

Mineral Dist No 4

and the

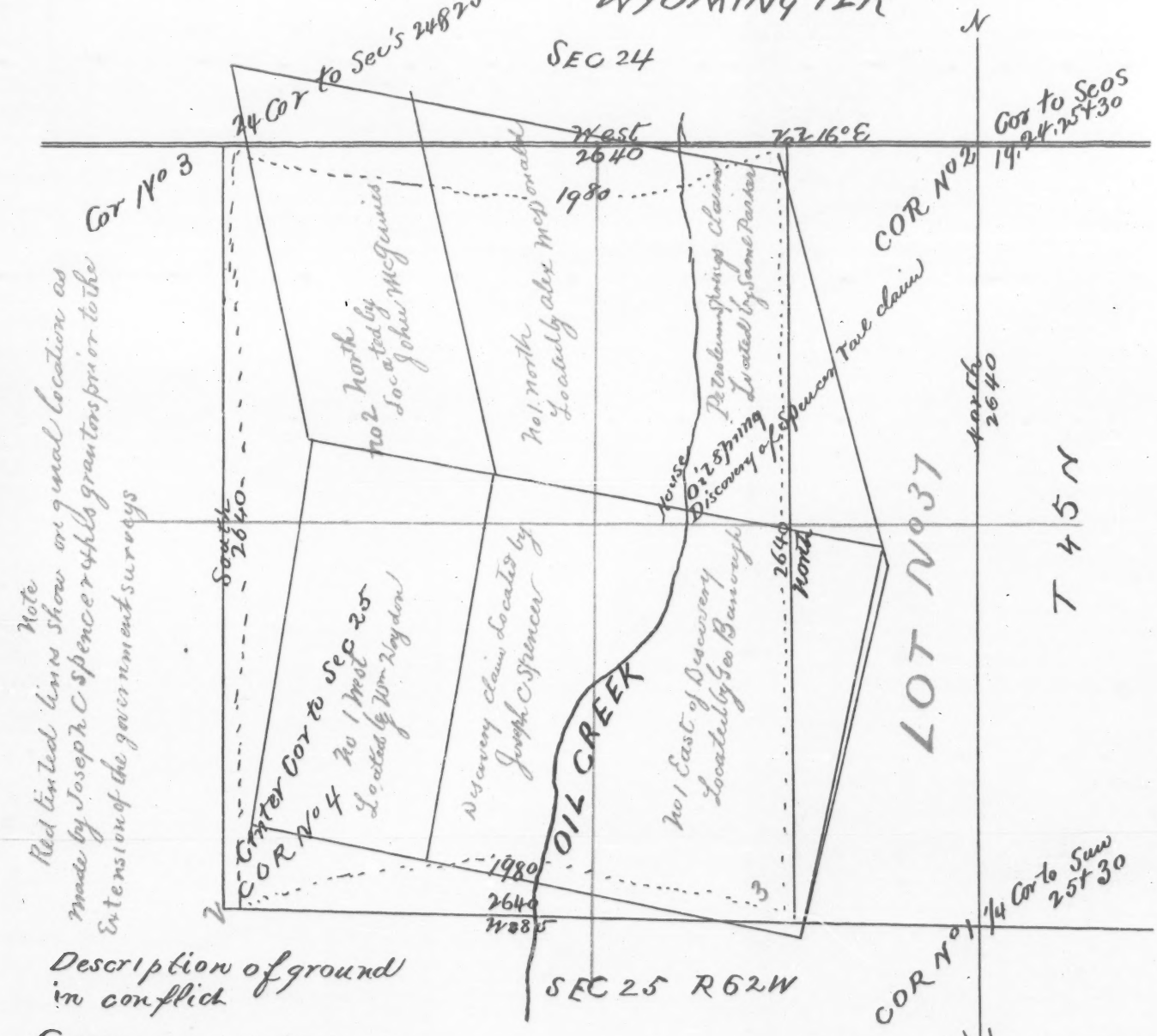
Petroleum Claims of Joseph C Spencer & Ralph C Webster

Laramie County

WYOMING TER

Exhibit A

No. 142.
Spencer et al.
v
McMaster
} p. 10



Description of ground in conflict

Commencing at No 3 of Lot No 37 and running as follows

Proof Courses	Courses	Distances Ft
1	South	2640
2	East	1980
3	North	2649
4	West	1980

Area of ground in conflict 120 acres

I hereby certify that the above diagram correctly represents the conflict claimed to exist between Lot No 37 and the Petroleum claims of Joseph C Spencer and Ralph C Webster as actually surveyed by me and I further certify that the value of the labor and improvements on said Petroleum claims exceed Six Hundred Dollars

Peter L Rogers
U S Dep Mineral Surveyor

Feby 20th 1882